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IN THE COURTS

Pam Smart Wants Appeal Heard in N.Y.

CONCORD (AP) — Pamela Smart soon may be arguing again that her 1991 trial was a travesty of justice — and if her lawyers have their way her ap



PAM SMART

peal won't be heard in a New Hampshire courtroom. The former media coordinator at a Hampton high school convicted of convincing her student-lover to kill her husband, is fighting the transfer of her petition filed in federal court in New York last December back to New Hampshire.

The petition charges her constitutional rights were violated at her Rockingham County Superior Court trial.

In August, a New York judge agreed with New Hampshire prosecutors that Smart's petition should be heard by a New Hampshire judge and two weeks ago transferred the case to U.S. District Court in Concord.

Noting that the crime took place in New Hampshire, witnesses are in New Hampshire and New Hampshire judges are more familiar with the underlying criminal law, Magistrate James Francis ruled that New Hampshire was a better forum to hear the case.

He dismissed Smart's contention that the saturated media coverage of her trial might intimidate witnesses.

But Smart's lawyers say that because Smart has been incarcerated in a New York prison nearly seven years, New York is the proper place for a hearing.

Smart, serving life without parole, was transferred to a prison in Bedford Hills, N.Y.,

in March 1993 because prison officials said she was a disciplinary problem at the New Hampshire women's prison in Goffstown.

"I think the state courts have not given us reason to be positive. The federal court is better suited to weigh federal and constitutional questions," said Leslie Ben Zvi, a New York lawyer representing Smart.

Smart has failed to convince state courts to overturn her case. After being found guilty of being an accomplice to first-degree murder, conspiring to commit murder and tampering with a witness, Smart appealed her case to the state Supreme Court, which rejected her claim.

In April 1997, Smart appealed again to Rockingham County Superior Court. Judge Douglas Gray, who presided over her trial in 1991, denied the petition.

As a last resort, Smart filed another petition in federal court last December. In it, Smart cites five grounds for throwing out her conviction.

She claims the trial judge violated her constitutional rights by communicating with jurors three times, that he failed to prevent witness collusion, refused to recall some witnesses and the prosecution failed to turn over evidence tending to prove her innocence.

She also claims that unrestrained publicity precluded a fair trial and that a life sentence without parole is cruel and unusual punishment.

Smart's lawyers have until Saturday to file objections to the change in venue.

Whether the case is heard in Concord or New York, a judge will review the petition. If the judge rejects her claims, Smart could appeal to the 1st U.S. Circuit Court of Appeals in Boston.

If she loses again, she could take the case to the U.S. Supreme Court.

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